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Twenty-fifth session

SUMMARY RECORD OF THE 477th MEETING

Held at Headquarters, New York,
on Monday, 11 May 1992, at 10 a.m.

Chairman: Mr. ABASCAL ZAMORA (Mexico)

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The meeting was called to order at 10.20 a.m.

DRAFT LEGAL GUIDE ON INTERNATIONAL COUNTERTRADE TRANSACTIONS (A/CN.9/362 and Add.1-18; A/CN.9/XXV/CRP.3 and 4)

1. Mr. SEKOLEC (International Trade Law Branch, Office of Legal Affairs), introducing the chapter summaries of the draft Legal Guide (A/CN.9/362/Add.17), said that the revised draft before the Commission was based on the comments of the Commission and of the Working Group on the earlier versions of the Guide. For greater clarity of presentation, the former chapter VII and the first section of former chapter III had been consolidated into chapter IV. Regrettably, it had not been possible, in the time available, to prepare the subject index requested by the Commission. The preparation of such an index, however, was a technical task which could be completed after the current session.

2. The secretariat suggested the insertion in chapter VI, section B, of the three paragraphs on investment contained in document A/CN.9/XXV/CRP.4. It would shortly make available to the Commission for its consideration the draft text of a resolution on the subject.

3. Mr. LEVY (Canada), supported by Mrs. FLINT (United Kingdom) and Ms. BUURE-HAGGLUND (Observer for Finland), proposed that the invaluable role played by the Chairman of the Working Group should be acknowledged in paragraph 2 of document A/CN.9/362 by the addition of the words "under the able leadership of Professor Bonell of Italy" after the word "Secretariat" in the last sentence.

4. It was so decided.

5. Mr. BONELL (Italy) said that, while countertrade was by no means the ideal form of international trade, the international community should be sensitive to the problems faced by many countries in their pursuit of countertrade transactions. The Commission's proposed Guide would assist such countries and the international business community in general in undertaking such transactions on a fair and equitable basis.

6. Ms. BUURE-HAGGLUND (Observer for Finland) said that her delegation was particularly satisfied that the draft Guide had dealt mainly with legal questions and had avoided commercial issues on which there was no agreement. The final text was instructive and not normative.

7. The CHAIRMAN invited the Commission to consider, chapter by chapter, the draft Legal Guide on International Countertrade Transactions as contained in document A/CN.9/362 and Add.1-18.

Chapter I (A/CN.9/362/Add.1)

8. Chapter I was approved.

Chapter II (A/CN.9/362/Add.2)

9. Mr. SEKOLEC (International Trade Law Branch, Office of Legal Affairs) suggested the addition in paragraph 2 of the words "or investment" at the end of the penultimate sentence, and the words "and investment" at the end of the final sentence.

10. It was so decided.

11. Mr. OLSZOWKA (Poland), referring to section C of document A/CN.9/362/Add.2, said that although countertrade was not the most effective way of conducting international trade, it was still an important activity not only for developing countries, but also for some developed European countries, including Poland. In view of the importance of governmental regulations to the conduct of countertrade transactions, it would be very helpful if the secretariat could supplement its study with an annex containing the specific rules and barriers established by Governments in respect of countertrade transactions in particular countries or groups of countries.

12. Mr. SEKOLEC (International Trade Law Branch, Office of Legal Affairs) said that the United Nations Conference on Trade and Development (UNCTAD) had already done several studies on that subject.

13. Mr. OLSZOWKA (Poland) asked whether the secretariat could make the studies available to members of the Commission for their consideration.

14. Mr. LEVY (Canada) said that he would strongly object to any further work that would delay the publication of the Guide, which was urgently needed by countries and commercial interests throughout the world. Accurate information of the type sought by the representative of Poland was particularly difficult to come by, and would, in any case, be subject to frequent changes.

15. Mr. SEKOLEC (International Trade Law Branch, Office of Legal Affairs) said that governmental regulations relating to countertrade were usually not contained in a discrete body of law, but were incorporated in various other regulations, which might not even make use of the word "countertrade". It would therefore be necessary to determine whether a particular governmental regulation dealt with countertrade. Moreover, it would be difficult to summarize governmental regulations on countertrade; most likely, it would be necessary to reproduce such legislation in full. Since the secretariat would have to rely on individual countries to submit all relevant regulations on countertrade, it would be difficult to ensure that a compilation of such legislation was complete and accurate.

16. In addition to the UNCTAD survey, several commercial organizations had published information on governmental regulations affecting countertrade.

17. Mr. OLSZOWKA (Poland) said that the secretariat should make the relevant documents on countertrade, in particular the UNCTAD survey, available to the members of the Commission, or at least provide a list of the symbols of those documents.

18. Mr. SEKOLEC (International Trade Law Branch, Office of Legal Affairs) said that the secretariat would endeavour to make such documents available to all interested delegations during the current session.

19. The CHAIRMAN said that, in paragraph 14, the word "barter" was translated into Spanish by "trueque"; however, the Spanish language also used the word "permuta" for "barter". That was only one example of the translation problems that would be encountered as the Commission made its final review of the draft Legal Guide. He suggested that, after the Commission had completed its consideration of the entire draft, efforts should be made to correct mistranslations and standardize terminology in all six languages.

20. Mr. EL-SHARKAWY (Egypt) said that there were serious mistakes in the Arabic translation which, if not corrected, would give rise to considerable misunderstandings in Arabic-speaking countries.

21. Mr. SEKOLEC (International Trade Law Branch, Office of Legal Affairs) said that the secretariat would be grateful if delegations informed it of any translation errors in the draft Legal Guide.

22. Mr. KOMAROV (Russian Federation) said that paragraph 16 should also refer to the use of credit in buy-back transactions.

23. Mr. CHATURVEDI (India) said that he did not understand why it was necessary to refer to "exporter" or "counter-importer" in paragraph 19 and to "importer" or "counter-exporter" in paragraph 20.

24. Mr. SEKOLEC (International Trade Law Branch, Office of Legal Affairs) said that it was important to retain those references because the exporter and the counter-importer, and the importer and the counter-exporter, might sometimes designate different parties.

25. Chapter II, as amended, was approved.

Chapter III (A/CN.9/362/Add.3)

26. Mr. KOMAROV (Russian Federation) suggested that paragraph 4 should refer to the quality of goods as well as their quantity.

27. Chapter III was approved.

Chapter IV (A/CN.9/362/Add.4)

28. Mr. SEKOLEC (International Trade Law Branch, Office of Legal Affairs) said the secretariat suggested that the words "or the extent to which the components of the purchased goods were produced locally ('local content' or 'local value added')" should be added to the end of the first sentence of paragraph 33.

29. It was so decided.

30. Mr. BONELL (Italy) said that section F, which dealt with the stage when commitment was fulfilled, should logically precede section C, which dealt with the time period for fulfilment of countertrade commitment. That had been the original order of those two sections, and he saw no reason why that order should be changed.

31. The CHAIRMAN said he took it that the Commission agreed to restore the original order.

32. It was so decided.

33. Chapter IV, as amended, was approved.

The meeting was suspended at 11.35 a.m. and resumed at noon.

Chapter V (A/CN.9/362/Add.5)

34. Mr. BONELL (Italy), referring to the last sentence of paragraph 14, said he did not think it was wise to reopen the issue of whether a governmental agency, after entering into an arbitration agreement, could attempt to avoid carrying out the award made by the arbitral tribunal.

35. The CHAIRMAN noted that the sentence had been included in order to take account of a comment made by the United States representative.

36. Mr. LEVY (Canada) said it was his understanding that the sentence was intended to alert governmental agencies to the possibility that special authorization might be required, rather than to open the possibility that the carrying out of the award might be avoided.

37. The CHAIRMAN said that that was also his understanding.

38. Turning to paragraph 23, he suggested that the word "appropriate" in the third example should be translated into Spanish by "apropiado" rather than "competente".

39. Chapter V was approved.

Chapter VI (A/CN.9/362/Add.6)

40. The CHAIRMAN suggested that the text contained in document A/CN.9/XXV/CRP.4 should be added after paragraph 23 of document A/CN.9/362/Add.6.

41. It was so decided.

42. Ms. LOZANO FERRO (Observer for Colombia) suggested that, in view of the special situation obtaining in the Andean region, language should be added to paragraph 21 indicating that a purchaser of technology could not be compelled

(Ms. Lozano Ferro, Observer, Colombia)

to sell the goods produced by that technology to the seller of the technology and that a seller of technology could not be compelled to communicate any improvements in that technology to the purchaser.

43. The CHAIRMAN, replying to a request for clarification from Mr. LEVY (Canada), said it was his understanding that the agreement between the Andean countries prohibited technology transfers under contracts containing compulsory provisions covering the two points referred to by the Observer for Colombia.

44. Ms. LOZANO FERRO (Observer for Colombia) explained that rather than prohibiting transfers, the agreement provided that countries could refuse to accept the compulsory provisions.

45. Mr. BONELL (Italy) pointed out that the draft Legal Guide was intended to deal only with questions specific to countertrade transactions. If the Commission attempted to include all of the complex aspects of technology transfers, it would open up many problems.

46. Mr. LEVY (Canada) agreed with the Italian representative; it would be best not to touch on those issues in the Guide.

47. Chapter VI, as amended, was approved.

Chapter VII (A/CN.9/362/Add.7)

48. The CHAIRMAN referred to the term "joint venture" used in the English version of paragraph 37. The English term was widely understood in the field of international trade, whereas the renderings in the other languages were far less clear. He suggested that the English term should be used untranslated in all language versions, or alternatively that it should be added in parentheses, immediately after whatever translation was used. The same problem occurred in other paragraphs with reference to other specialized terms. He suggested that the secretariat might take his proposal into consideration and also pass it on to the translators.

49. Chapter VII was approved.

Chapter VIII (A/CN.9/362/Add.8)

50. Chapter VIII was approved.

Chapter IX (A/CN.9/362/Add.9)

51. The CHAIRMAN pointed out that the English words "trust" and "trustee" used in paragraph 10 had a specific legal meaning. The words used in some of the other language versions did not mean the same thing. He suggested that the words "trust" and "trustee" should be used in English in all the language versions.

52. Mr. BONELL (Italy) agreed. Paragraph 10 referred specifically to common-law systems, and it was appropriate to retain the words which were used in such systems, such as "trust".

53. The CHAIRMAN pointed out that paragraph 15 contained a list of different types of accounts, such as "escrow", "trust", and so on. He suggested that those English terms should be added in parentheses immediately after their translations.

54. Not all countries permitted the operation of blocked accounts as described in paragraph 23. An explanation to that effect might have been added.

55. Chapter IX was approved.

ELECTION OF OFFICERS (continued)

56. Mr. SCHNEIDER (Germany), speaking on behalf of the Group of Western European and other States, nominated Mr. Duchek (Austria) for the office of Rapporteur.

57. Mr. Duchek (Austria) was elected Rapporteur by acclamation.

58. Mr. FUJISHITA (Japan), speaking on behalf of the Group of Asian States, nominated Mr. Safarian Nemat-Abad (Islamic Republic of Iran) for the office of Vice-Chairman.

59. Mr. AZZIMANE (Morocco), speaking on behalf of the Group of African States, nominated Mr. El-Sharkawy (Egypt) for the office of Vice-Chairman.

60. Mr. KOMAROV (Russian Federation), speaking on behalf of the Group of Eastern European States, nominated Mr. Olszowka (Poland) for the office of Vice-Chairman.

61. Mr. El-Sharkawy (Egypt), Mr. Safarian Nemat-Abad (Islamic Republic of Iran) and Mr. Olszowka (Poland) were elected Vice-Chairmen by acclamation.

The meeting rose at 1 p.m.